

## Complaint Report (CCRB)

|                                     |                                  |                          |                          |
|-------------------------------------|----------------------------------|--------------------------|--------------------------|
| <b>CCRB Case No :</b>               | 200710147                        | <b>C/V Report Date :</b> | Mon, 07/16/2007 04:22 PM |
| <b>Complaint Type :</b>             | CCRB                             | <b>Investigator :</b>    | Jessica Peña             |
| <b>Complaint Made At :</b>          | CCRB                             | <b>Ref. No</b>           |                          |
| <b>Received Date (CCRB) :</b>       | Mon, 07/16/2007 04:22 PM         | <b>Mode :</b>            | In-person                |
| <b>Incident Date(s) :</b>           | Thursday, 07/12/2007 11:00 PM    |                          |                          |
| <b>Place of Occurrence:</b>         | [REDACTED]                       | <b>Precinct:</b>         | 120                      |
| <b>Location :</b>                   | Street/highway                   | <b>Boro:</b>             | Staten Island            |
| <b>Reason for Initial Contact :</b> | Moving violation                 |                          |                          |
| <b>Charges:</b>                     | No arrest made or summons issued |                          |                          |

## Complainant/Victim Details

|                          |            |                       |             |
|--------------------------|------------|-----------------------|-------------|
| <b>Name:</b>             | [REDACTED] | <b>Type:</b>          | Comp/Victim |
| <b>Address:</b>          | [REDACTED] |                       |             |
| <b>Contacts:</b>         | [REDACTED] | [REDACTED]            |             |
|                          | [REDACTED] | [REDACTED]            |             |
|                          | [REDACTED] | [REDACTED]            |             |
| <b>Gender:</b>           | [REDACTED] | <b>Ethnicity:</b>     | [REDACTED]  |
| <b>Person Assisting:</b> |            | <b>Date of Birth:</b> | [REDACTED]  |

## Officer(s) Named in Complaint

| Rank | Officer          | S/W Officer     | Tax No | Race     | Cmd | Allegations/Board Dispositions                     |
|------|------------------|-----------------|--------|----------|-----|--|
| POM  | Frank Lupo       | Subject Officer | 928677 | White    | 120 | Vehicle stop - (A)<br><b>Unsubstantiated</b>       |
| POM  | Frank Lupo       | Subject Officer | 928677 | White    | 120 | Frisk - (A)<br><b>Exonerated</b>                   |
| POM  | Frank Lupo       | Subject Officer | 928677 | White    | 120 | Search (of person) - (A)<br><b>Unsubstantiated</b> |
| POM  | Manuel Sepulveda | Subject Officer | 929157 | Hispanic | 120 | Vehicle stop - (A)<br><b>Unsubstantiated</b>       |
| POM  | Manuel Sepulveda | Subject Officer | 929157 | Hispanic | 120 | Vehicle search - (A)<br><b>Unsubstantiated</b>     |
| LT   | Robert Zaugg     | Witness Officer | 918505 | White    | 447 |  |
| CPT  | Edwin Leschack   | Witness Officer | 860177 | White    | 447 |  |

## Initial Complaint Narrative

PO Lupo and PO Sepulveda stopped § 87(2)(b) for allegedly speeding as he was driving home on § 87(2)(b) in Staten Island. The officers asked for his documentation, which he provided, then requested that he exit the vehicle. § 87(2)(b) complied. PO Lupo searched § 87(2)(b) as he stood behind his vehicle. PO Sepulveda searched § 87(2)(b)'s vehicle. After running § 87(2)(b)'s license, the officers released § 87(2)(b) without arrest or summons. § 87(2)(b) identified the officers by reading their nameplates and writing down their names and shield numbers. CTS identified PO Frank Lupo and PO Manuel Sepulveda as assigned to the 120th Precinct.

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**Witness**

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## CCRB INVESTIGATIVE RECOMMENDATION

|   |   |                               |  |                                    |                                 |
|---|---|-------------------------------|--|------------------------------------|---------------------------------|
| Investigator:<br>Jessica Peña                     | Team:<br>Team # 3                               | CCRB Case #:<br>200710147     | <input type="checkbox"/> Force                         | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.   |
|   |   |                               | <input checked="" type="checkbox"/> Abuse              | <input type="checkbox"/> O.L.      | <input type="checkbox"/> Injury |
| Incident Date(s)<br>Thursday, 07/12/2007 11:00 PM | Location of Incident:<br>in front of § 87(2)(b) | Precinct:<br>120              | 18 Mo. SOL<br>1/12/2009                                | EO SOL<br>1/12/2009                |                                 |
| Date/Time CV Reported<br>Mon, 07/16/2007 10:15 AM | CV Reported At:<br>CCRB                         | How CV Reported:<br>In-person | Date/Time Received at CCRB<br>Mon, 07/16/2007 10:15 AM |                                    |                                 |

| Complainant/Victim | Type       | Home Address |
|--------------------|------------|--------------|
| § 87(2)(b)         | § 87(2)(b) | § 87(2)(b)   |

| Subject Officer(s)      | Shield | TaxID  | Command |
|-------------------------|--------|--------|---------|
| 1. POM Frank Lupo       | 08621  | 928677 | 120 PCT |
| 2. POM Manuel Sepulveda | 16172  | 929157 | 120 PCT |

| Witness Officer(s)    | Shield No | Tax No | Cmd Name |
|-----------------------|-----------|--------|----------|
| 1. LT Robert Zaugg    | 00000     | 918505 | PBSI     |
| 2. CPT Edwin Leschack | 00000     | 860177 | PBSI     |

| Officer(s)             | Allegation   | Investigator Recommendation |
|------------------------|--|-----------------------------|
| A.POM Frank Lupo       | Abuse: PO Frank Lupo stopped the car in which § 87(2)(b) was an occupant.        | § 87(2)(b)                  |
| B.POM Manuel Sepulveda | Abuse: PO Manuel Sepulveda stopped the car in which § 87(2)(b) was an occupant.  | § 87(2)(b)                  |
| C.POM Manuel Sepulveda | Abuse: PO Manuel Sepulveda searched the car in which § 87(2)(b) was an occupant. | § 87(2)(b)                  |
| D.POM Frank Lupo       | Abuse: PO Frank Lupo frisked § 87(2)(b)  | § 87(2)(b)                  |
| E.POM Frank Lupo       | Abuse: PO Frank Lupo searched § 87(2)(b)   | § 87(2)(b)                  |
| § 87(4-b), § 87(2)(g)  | § 87(2)(b)   | § 87(2)(b)                  |
| § 87(4-b), § 87(2)(g)  | § 87(2)(b)   | § 87(2)(b)                  |
| § 87(2)(g), § 87(4-b)  | § 87(2)(b)   | § 87(2)(b)                  |
| § 87(2)(g), § 87(4-b)  | § 87(2)(b)   | § 87(2)(b)                  |

## Synopsis

On July 17, 2007, § 87(2)(b) appeared at the CCRB as a walk-in to file this complaint. On July 12, 2007, at 11:00pm, PO Frank Lupo and PO Manuel Sepulveda pulled over § 87(2)(b)'s vehicle in front of 255 Osgood Avenue in Staten Island (**Allegations A and B**). PO Lupo stated that they observed § 87(2)(b) speeding, which he denied. After providing his license, § 87(2)(b) was ordered out of the car and PO Sepulveda proceeded to open § 87(2)(b)'s glove compartment (**Allegation C**). PO Lupo then frisked and searched § 87(2)(b) (**Allegations D and E**). After running § 87(2)(b)'s drivers' license, the officers allowed § 87(2)(b) to leave the scene. He was neither arrested nor issued a summons.

§ 87(2)(b), § 87(4-b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

This case was initially assigned to Investigator Daniel Missale. Upon his resignation it was reassigned to Assistant Supervising Investigator Jessica Serrano on January 7, 2007 for the purposes of preparing the closing report.

## Summary of Complaint

§ 87(2)(b) appeared as a walk-in at the CCRB on July 17, 2007 (encl. 6A-6C). § 87(2)(b) is a § 87(2)(b) old black male and resides at § 87(2)(b) in Staten Island.

On July 12, 2007, at approximately 11:00pm, § 87(2)(b) was driving his black Ford Explorer home when he was stopped by two uniformed officers in front of § 87(2)(b) in Staten Island. The officers were in an unmarked van and identified via investigation as PO Manuel Sepulveda and PO Frank Lupo. § 87(2)(b) provided his license and registration upon request and questioned why he was stopped, but the officers did not respond. PO Lupo asked § 87(2)(b) about another license that he observed in § 87(2)(b)'s glove compartment. § 87(2)(b) responded that the license in the glove compartment was an older license that he had replaced. PO Lupo then told § 87(2)(b) that he observed him speed past his patrol car. § 87(2)(b) refuted PO Lupo and stated that he was driving behind a slow moving vehicle and was not speeding. PO Lupo reviewed § 87(2)(b)'s license and then asked him to turn off the car, exit the vehicle and walk towards the back of the vehicle.

§ 87(2)(b) walked towards the back of the vehicle and saw PO Sepulveda searching his vehicle. Initially, § 87(2)(b) could not specify where PO Sepulveda searched given that he was told not to turn around. But later, § 87(2)(b) stated that he could see PO Sepulveda open the glove compartment. PO Lupo told § 87(2)(b) that he received a call for a person matching § 87(2)(b)'s physical description and vehicle speeding past a sergeant's vehicle. PO Lupo then instructed § 87(2)(b) to turn around and place his hands against his vehicle. PO Lupo frisked and searched § 87(2)(b)'s front and back pockets. § 87(2)(b) had some change, a cell phone battery and some paper in his pockets. § 87(2)(b) questioned if the officers were going to arrest him and then informed the officers that he intended on filing a complaint. § 87(2)(b) requested permission to enter his vehicle to retrieve a pen and paper. § 87(2)(b) told PO Lupo that he better file a report. PO Lupo told § 87(2)(b) not to threaten the officers, to which § 87(2)(b) responded that it was not a threat. The officers then entered the information indicated on § 87(2)(b)'s license into the officers' computer. § 87(2)(b) retrieved the pen and paper from his vehicle and took down the officers' names and shield numbers. § 87(2)(b) told the

officers that he knew officers and disapproved of the way they were behaving. PO Lupo said that this was the way they get guns on the street. § 87(2)(b) told the officers that he lived five houses down and has been embarrassed in front of his neighbors. The officers brought § 87(2)(b) to their van and displayed a computer to him. PO Lupo said that if they were rookie cops, § 87(2)(b) would be in handcuffs because there is a warrant for an individual with the same name. The officers then allowed § 87(2)(b) to leave. § 87(2)(b) shook the officers' hands and left. § 87(2)(b) stated he would not be able to identify anyone who may have witnessed the incident.

## **Results of Investigation**

### **Identification of Officers Interviewed**

§ 87(2)(b) identified both officers by reading their names off their nameplates. A search on the CCRB Complaint Tracking System (CTS) confirmed that PO Lupo and PO Sepulveda are assigned to the 120<sup>th</sup> Precinct.

### **Officer Statements**

#### **PO Frank Lupo**

PO Lupo was interviewed at the CCRB on August 29, 2007 (encl. 7A-7D). On July 12, 2007, PO Lupo worked a tour from 6:00pm to 2:00am with PO Sepulveda. The officers were dressed in polo shirts, which displayed their names and shields. The officers were assigned to the Street Narcotics Enforcement Unit (SNEU) and van number 6603. PO Lupo did not have any memo book entries pertaining to this incident.

On July 12, 2007, at approximately 11:00pm, PO Lupo and PO Sepulveda were having their memo books scratched by Lt. Robert Zaugg when a black Ford Explorer sped by, coming within two feet of PO Lupo's body. The vehicle was traveling at such a speed that Lt. Zaugg's vehicle shook. Lt. Zaugg questioned if PO Lupo and PO Sepulveda were going to stop the vehicle. PO Lupo and PO Sepulveda then entered their van and pursued the vehicle.

The vehicle was stopped in front of § 87(2)(b), less than two blocks from the officers' initial location. PO Lupo and PO Sepulveda approached the driver, identified via investigation as § 87(2)(b). All of the windows of the vehicle were tinted and were lowered except for the driver's side window. PO Lupo was unable to see into backseat. § 87(2)(b) denied speeding and stated he was coming from a friend's house. § 87(2)(b) appeared nervous and was fidgeting with something in his hands. PO Lupo was not able to see the object in § 87(2)(b)'s hands. § 87(2)(b) complied with PO Lupo's instructions to place his hands on the steering wheel. PO Lupo requested § 87(2)(b)'s identification twice, but he did not comply. PO Lupo then told § 87(2)(b) that he would feel more comfortable if he stepped out of the vehicle. § 87(2)(b) exited but became loud and screamed at PO Lupo. § 87(2)(b) again refused to provide his identification and stated that the officers were making an illegal car stop.

PO Lupo instructed § 87(2)(b) to walk to the back of his vehicle where he proceeded to frisk him. Given that § 87(2)(b) moved his hands while in the vehicle, PO Lupo feared that § 87(2)(b) might have possessed a weapon. PO Lupo did not see any bulges prior to frisking § 87(2)(b). § 87(2)(b) provided his identification to PO Lupo. At some point after PO Lupo frisked him, PO Sepulveda frisked § 87(2)(b). PO Lupo did look inside of § 87(2)(b)'s vehicle towards the driver's seat and saw a cell phone and keys on the seat. Initially, PO Lupo stated that he did not enter the vehicle but later testified that he reached into the vehicle from the driver's side door to unlock the driver's side passenger door and look under the back seats. PO Lupo then frisked § 87(2)(b) a second time. § 87(2)(b) kept placing his hands in his pockets, which PO Lupo instructed him not to do until the stop was completed. PO Sepulveda did open the front and back doors on the passenger's side and looked under the driver's seat given that § 87(2)(b) was moving his hands while in the vehicle. PO Lupo was uncertain if PO Sepulveda searched the glove compartment. § 87(2)(b) was then released from the scene. PO Lupo did not prepare a stop, question and frisk report for § 87(2)(b) but believed that PO Sepulveda prepared a report. PO Lupo did not issue § 87(2)(b) given that he is not part of a summons unit. PO Lupo could not recall if § 87(2)(b)'s trunk was searched.

### **PO Manuel Sepulveda**

PO Sepulveda was interviewed at the CCRB on November 1, 2007 (encl. 8A-8D). On July 12, 2007, PO Sepulveda was assigned with PO Lupo from 5:30pm to 2:05am on July 13, 2007 as part of the SNEU team. PO Sepulveda could not remember if he was dressed in his uniform. Both officers were assigned to an unmarked vehicle, number 271. PO Sepulveda did not have any memo book entries regarding this incident. His statement was consistent with PO Lupo's with the following discrepancies noted below.

PO Sepulveda corroborated that he observed § 87(2)(b)'s vehicle traveling at a high rate of speed and almost strike Lt. Zaugg. PO Sepulveda added that the vehicle was swerving and occasionally touched the yellow line. PO Sepulveda, who has experience in Highway Enforcement, stated that § 87(2)(b) was traveling at approximately 60 to 70mph in a 25mph zone. PO Sepulveda asked Lt. Zaugg if he had completed the inspection, to which he affirmed and then PO Lupo and PO Sepulveda pursued § 87(2)(b) stopping him on Osgood Avenue. At no time did PO Sepulveda lose sight of the vehicle.

Upon approaching the vehicle, PO Sepulveda requested § 87(2)(b)'s identification and questioned if there was an emergency to explain why he was speeding. § 87(2)(b) became irate and denied speeding. § 87(2)(b) was making movements in the car and given that the officers could not see his hands, he was asked to exit the car. § 87(2)(b) walked to the back of his vehicle with PO Lupo. PO Sepulveda then used his flashlight to look in the area where § 87(2)(b) was seated: the driver's seat, inside of the center console, driver and passenger's side floor and the back seat. PO Sepulveda did not find anything inside of the vehicle and did not open any doors. PO Sepulveda did not cross the plane of the door when looking inside of his vehicle. The front windows of the § 87(2)(b)'s vehicle had been rolled down.

PO Sepulveda walked to the back of § 87(2)(b)'s vehicle and asked § 87(2)(b) if he had any weapons on him, which he denied. Both officers frisked § 87(2)(b) but nothing was recovered. PO Sepulveda stated that they frisked § 87(2)(b) because he was confrontational and acted in a threatening manner consisting of pacing and not staying still. PO Sepulveda denied searching § 87(2)(b) and did not see PO Lupo search § 87(2)(b). PO Sepulveda informed § 87(2)(b) that he could receive a summons for reckless driving and speeding. However, given that PO Sepulveda did not have any summonses with him at that time, no summons was issued. § 87(2)(b)'s identification was returned and he left the scene. PO Sepulveda was certain that PO Lupo prepared a stop, question and frisk report.

### **Lt. Robert Zaugg**

Lt. Robert Zaugg was interviewed at the CCRB on November 16, 2007 (encl. 9A-9B). On July 12, 2007 Lt. Zaugg worked from 10:25pm to 6:00am. Lt. Zaugg was working with Captain Edwin Lecshack and was assigned to patrol monitoring. Lt. Zaugg was driving an unmarked vehicle, gray Chrysler or a black Ford.

On July 12, 2007, at approximately 11:00pm, Lt. Zaugg and Cpt. Lecshack arrived at 135 Park Hill Avenue to scratch PO Lupo and PO Sepulveda's memo books. PO Lupo and PO Sepulveda were conducting a car stop when Lt. Zaugg arrived. Lt. Zaugg and Cpt. Lecshack exited their vehicle and approached the officers to make sure they were safe. Lt. Zaugg told the officers that following the car stop he would scratch their books. Lt. Zaugg and Cpt. Lecshack returned to their vehicle. PO Lupo and PO Sepulveda spoke to the individual. At no time did Lt. Zaugg observe the officers frisk the individual or search the vehicle. Once PO Lupo and PO Sepulveda concluded the stop, they approached Lt. Zaugg's vehicle and presented their memo books. Lt. Zaugg signed the memo books and drove away. Cpt. Lecshack left the location prior to PO Lupo and PO Sepulveda. Lt. Zaugg could not recall what type of vehicle was stopped and the description of the individual stopped. Lt. Zaugg did not know why the car stop was performed. Lt. Zaugg remained at the scene for four to five minutes. Lt. Zaugg did not observe any vehicles committing traffic violations while on scene, specifically a black SUV traveling at a high speed. Lt. Zaugg stated that he did not order PO Lupo and PO Sepulveda to conduct any car stop.

### **Captain Edwin Leschack**

Cpt. Leschack was interviewed at the CCRB on December 12, 2007 (encl. 10A-10B). Cpt. Leschack is assigned to the Staten Island Investigations Unit as the commanding officer. He does not carry a memo book. Capt. Edwin Leschack was interviewed at the CCRB on December 12, 2007. On July 12, 2007, Capt. Leschack worked from 11:00pm to 7:00am. Capt. Leschack was assigned to “unannounced patrol.” Capt. Leschack had an operator named Lt. Zaugg. Capt. Leschack was wearing plainclothes and was assigned to unmarked vehicle number 1082. Cpt. Leschack had no recollection of the incident and stated that at 11:00pm he was at the stationhouse. A brief narrative of the incident did not assist in his recollection.

### **Police Documents**

The **roll call** from the 120<sup>th</sup> Precinct confirmed that PO Sepulveda and PO Lupo were assigned to the SNEU in vehicle number 8603 (encl. 12A-12B) There was no **stop, question and frisk report** prepared for § 87(2)(b) (encl. 11A-11B, 15D). There was no **SPRINT** report generated for this incident (encl. 15C).

### **Complainant and Officer CCRB History**

This is the first complaint filed by § 87(2)(b) (encl. 4). Neither PO Lupo nor PO Sepulveda has any prior substantiated cases during their six-year tenure with the NYPD (encl. 2A-2B and 3A-3B).

## **Conclusions and Recommendations**

### **Identification of Subject Officers**

Given that both officers made the decision to stop § 87(2)(b)'s vehicle, allegations A and B are pleaded against them respectively. § 87(2)(b) alleged that PO Sepulveda searched his vehicle, therefore allegation C is pleaded to him. Finally, § 87(2)(b) alleged that PO Lupo frisked and searched him. Thus, allegations D and E are pleaded to him.

### **Undisputed Facts**

It is undisputed that the PO Lupo and PO Sepulveda stopped § 87(2)(b)'s vehicle because they believed that he was speeding. PO Lupo instructed § 87(2)(b) to exit the vehicle and frisked him. § 87(2)(b) was released without being issued a summons.

§ 87(2)(b), § 87(2)(g)

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§ 87(2)(b), § 87(2)(g)

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§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

#### **Allegations not pleaded**

PO Sepulveda and PO Lupo stated that PO Sepulveda frisked § 87(2)(b). However, since § 87(2)(b) did not make this allegation, an allegation of frisk is not being attributed to PO Sepulveda.

**Allegation A: Abuse of Authority: PO Frank Lupo stopped the car in which § 87(2)(b) was an occupant.**

**Allegation B: Abuse of Authority: PO Manuel Sepulveda stopped the car in which § 87(2)(b) was an occupant.**

§ 87(2)(g)

§ 87(2)(b) refuted he was speeding and stated that he was driving behind a slow moving vehicle.

Based on PO Lupo's testimony, § 87(2)(b) sped within two feet of PO Lupo's body. § 87(2)(b) was traveling at such a speed that Lt. Zaugg's vehicle shook. § 87(2)(g). PO Sepulveda stated that he observed § 87(2)(b) driving at a high rate of speed and almost strike Lt. Zaugg. PO Sepulveda added that the vehicle was swerving and occasionally touched the yellow line. § 87(2)(b), § 87(2)(g)

**Allegation C: Abuse of Authority: PO Manuel Sepulveda searched the car in which § 87(2)(b) was an occupant.**

§ 87(2)(b) alleged that once out of his vehicle, PO Sepulveda searched his glove compartment. It is probable that he opened the glove compartment given that according to § 87(2)(b)'s testimony, he informed PO Lupo that his old license was inside it. § 87(2)(b) was unable to see if PO Sepulveda searched other areas of the car. PO Sepulveda testified that he used his flashlight to peer into the area where § 87(2)(b) was seated: the driver's seat, inside of the center console, driver and passenger's side floor and the back seat. However, at no point did he open the car doors. § 87(2)(b), § 87(2)(g)



§ 87(2)(b), § 87(2)(g)

**Allegation D: Abuse of Authority: PO Frank Lupo frisked § 87(2)(b)**

Both officers confirm that § 87(2)(b) was frisked. The frisk was conducted given that § 87(2)(b) was fidgeting in the front seat and they were unable to see his hands while in the car, § 87(2)(b), § 87(2)(g). Additionally, PO Lupo added that § 87(2)(b) repeatedly refused to provide his identification. § 87(2)(b), § 87(2)(g).

According to Kamins' Search and Seizure guidelines, an officer is permitted to frisk the driver of a vehicle if the officer has a reasonable basis for suspecting that the individual is armed and may be dangerous (encl. 1A). § 87(2)(g).

**Allegation E: Abuse of Authority: PO Frank Lupo searched § 87(2)(b)**

§ 87(2)(b) claimed that following the frisk, PO Lupo searched his pants pockets. Both officers confirmed that § 87(2)(b) was frisked but denied that he was searched. § 87(2)(g).

§ 87(2)(g), § 87(4-b)

§ 87(4-b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: